

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission
RAIL SAFETY SECTION

DOCKETED

5. However, the ICC has previously awarded compensation and ordered the closure of a road when the City had already vacated prior to filing its petition. See *The Burlington Northern and Santa Fe Railway Company, and City of Earlville, LaSalle County, Illinois, v. State of Illinois Department of Transportation, Cause No. T02-0063*. (A copy of the petition, amended petition, and the ICC's order in said case are attached hereto as Exhibits A, B and C respectively.) In *Earlville*, the City vacated the intersection of Burlington Northern Santa Fe Railway's trackage and Ottawa Street at mile post 72.14 on April 29, 2002. Thereafter, the BNSF and the City filed a joint petition seeking approval of the closure on June 4, 2002. The BNSF and the City subsequently filed an amended petition on August 5, 2002, seeking compensation for the voluntary closure. The ICC granted the petition and awarded the City \$30,000 in compensation.

6. Lenox Township seeks review of the ruling dismissing its Petition for want of jurisdiction for the following reasons:

- a.) Lenox Township is not aware of any statute, administrative law, administrative ruling, or other rule of law which provides that to be eligible for compensation the ICC must first order or approve the closing of the road.
- b.) To the contrary, there has been a recent case where the ICC approved the closure and awarded compensation despite the fact that the City had vacated the road and tracks more than thirty (30) days before filing their petition with the ICC.

c.) If the policy of the ICC is to award compensation to municipalities who voluntarily close road and railroad track intersections, the issue of whether the ICC or the municipality ordered the closing should be irrelevant. Both entities have equal authority to order such a closing.

WHEREFORE, Lenox Township respectfully requests that this Motion for Interlocutory Review be set for hearing, and, after hearing, that the Motion be granted and the dismissal be reversed.

Dated: April 17, 2003

Lenox Township, Warren County, Illinois

By: George Hennenfent
George Hennenfent, its attorney

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

THE BURLINGTON NORTHERN and)
SANTA FE RAILWAY COMPANY, and)
CITY OF EARLVILLE, LaSALLE COUNTY,)
ILLINOIS,)

Petitioners,)

v.)

STATE OF ILLINOIS, DEPARTMENT)
OF TRANSPORTATION)

Respondent.)

Petition seeking an order from the Illinois)
Commerce Commission authorizing)
permanent closure and removal of the grade)
crossing located at the intersection of Ottawa)
Street, in the City of Earlville, LaSalle)
County, Illinois and the trackage of)
The Burlington Northern and Santa Fe)
Railway Company at milepost 72.14,)
DOT No. 079 627H.)

JOINT PETITION

Now come joint petitioners, The Burlington Northern and Santa Fe Railway Company ("BNSF"), by its attorneys, Kenneth J. Wysoglad & Associates and City of Earlville, LaSalle County, Illinois and for their Joint Petition to the Illinois Commerce Commission states as follows:

1. Petitioner, BNSF is a Delaware corporation authorized to transaction business in the State of Illinois and operates a common carrier service by railroad in interstate and intrastate commerce with certain trackage and other facilities located throughout the State of Illinois, including the City of Earlville, LaSalle County, Illinois.
2. Petitioner, City of Earlville, LaSalle County, Illinois ("City") is an Illinois

Exhibit A

municipal corporation.

3. Ottawa Street is a north/south roadway located within the geographic boundaries of the City and is under the jurisdiction of City.
4. BNSF operates certain railroad trackage extending in a generally east to west direction through City.
5. Ottawa Street traverses the trackage of BNSF by virtue of an at grade crossing located at milepost 72.14, DOT No. 079 627YH.
6. BNSF and City recommend and request that the at grade crossing at Ottawa Street and the tracks of BNSF, milepost 72.14, DOT No. 079 627H be permanently closed, the at grade crossing and warning devices removed and the roadway barricaded as the public convenience and necessity no longer require the existence of the aforesaid at grade crossing and public safety would be enhanced with the closure of the aforesaid at grade crossing.
7. The City, in accordance with all legal requirements, has passed its ordinance and resolution vacating Ottawa Street on both sides and over the subject at grade crossing at milepost 72.14, DOT No. 079 627H. Attached hereto, marked Exhibit 1 and made a part hereof is a true and correct copy of City's resolution and/or ordinance vacating the subject roadway at the aforescribed location. As City, a public highway authority in interest, has vacated Ottawa Street on both sides of and across the at grade crossing location, Joint Petitioners believe that the provision of 625 ILCS 5/18c-7401(3)

have been met and the grade crossing can be closed, barricaded and removed without further order of the Illinois Commerce Commission. However, to the extent a determination and order is required from the Illinois Commerce Commission then Joint Petitioners herein request the Illinois Commerce Commission enter an order permanently closing and abolishing the grade crossing at the intersection of Ottawa Street and the trackage of BNSF, milepost 72.14, DOT No. 079 627H.

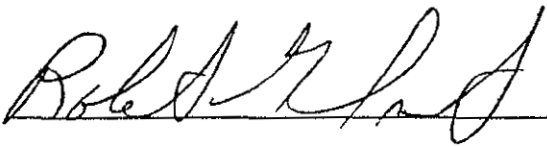
Wherefore, Joint Petitioners, The Burlington Northern and Santa Fe Railway Company and City of Earlville, LaSalle County, Illinois request the Illinois Commerce Commission, if it deems necessary, set the aforesaid matter for hearing and to the extent required by law enter a law abolishing and permanently closing the at grade crossing located at the intersection of vacated Ottawa Street and the trackage of BNSF at milepost 72.14, DOT No. 079 627H and such other relief as the Illinois Commerce Commission deems just and appropriate.

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

By: Cheryl J. Janssen

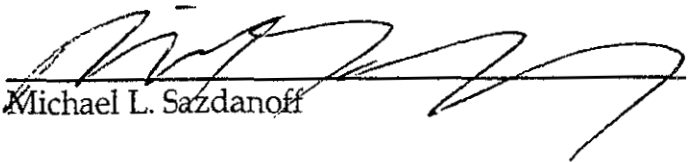
Title: Manager of Public Projects

CITY OF EARLVILLE, LaSALLE COUNTY,
ILLINOIS

By: 

Title: MAYOR

KENNETH J. WYSOGLAD & ASSOCIATES


Michael L. Sazdanoff

Michael L. Sazdanoff
Kenneth J. Wysoglad & Associates
Attorneys for Petitioner
The Burlington Northern and Santa Fe Railway Company
118 S. Clinton Street, Suite 700
Chicago, Illinois 60661
(312) 441-0333

STATE OF MISSOURI)
) SS
COUNTY OF GREENE)

VERIFICATION

Cheryl Townlian, being first duly sworn deposes and states that she is Manager, Public Projects for The Burlington Northern and Santa Fe Railway Company, Joint Petitioner herein. That she is duly authorized by said railroad company to sign, verify and file the foregoing Joint Petition and that the matters set forth in said Joint Petition are true and correct to the best of her knowledge, information and belief.

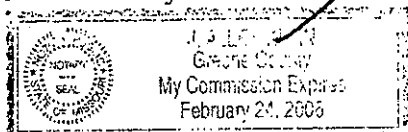
Cheryl Townlian

Subscribed and sworn to

before me this 1 day of

APRIL, 2002

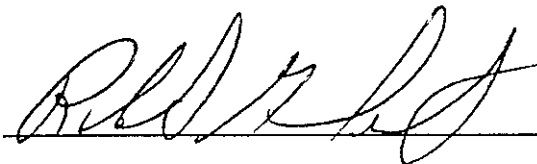
J. Allen Zuh
Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF LaSALLE)

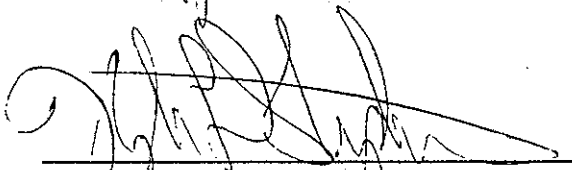
VERIFICATION

I, ROBERT G. SMITH, being
first duly sworn on oath, deposes and states that he/she is MAYOR
_____ of the City of Earlville, LaSalle County, Illinois, that
he/she is duly authorized to sign, verify and file the foregoing Joint Petition and that the
matters set forth in said petition are true and correct to the best of his/her knowledge,
information and belief.



Subscribed and sworn to

before me this 29th day of
April, 2002



Notary Public



ORDINANCE 4-29-02

AN ORDINANCE VACATING A STREET AT THE OTTAWA STREET
CROSSING OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
IN THE CITY OF EARLVILLE, ILLINOIS

WHEREAS, the City of Earlville has determined that the public interest will be served by vacating a portion of Ottawa Street at the point that such street is crossed by the Burlington Northern and Santa Fe Railway, such intersection being:

the intersection of Burlington Northern and Santa Fe Railway's trackage and
Ottawa Street, mile post 72.14, DOT No. 079627H.

WHEREAS, the City of Earlville has determined the statutorily dedicated portion of Ottawa Street serves no current or future public purpose and is currently a hazard to public health and safety;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EARLVILLE, LASALLE COUNTY, ILLINOIS AS FOLLOWS:

1. That the recitals contained in the preamble to this Ordinance are incorporated by reference as if set out in full herein.

2. That the City of Earlville shall, and hereby does, vacate:

the intersection of Burlington Northern and Santa Fe Railway's trackage and
Ottawa Street, mile post 72.14, DOT No. 079627H.

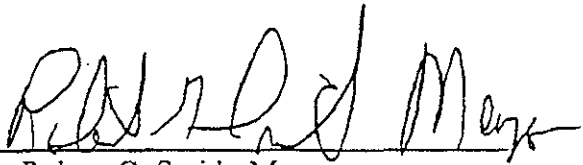
3. That the ownership of the property vacated by virtue of this Ordinance shall be vested in the adjoining property owner, Burlington Northern and Santa Fe Railway Company, pursuant to the provisions of Section 11-91-1 of the Illinois Municipal Code (65 ILCS 5/11-91-1), subject to the Burlington Northern and Santa Fe Railway reimbursing the City of Earlville for the publication costs incurred in publishing the public notice of the street vacation hearing, reimbursing the City of Earlville for the fee associated with the preparation of any

necessary plat of Survey, and reimbursing the City of Earlville for legal fees incurred by the City of Earlville for the City Attorney's work in preparing this Ordinance in the amount of Three Hundred Fifty (\$350.00) Dollars, and honoring all terms of the separate Agreement entered into contemporaneously by the parties, including payment of a specified sum the City Council has determined that is at least equal to the fair market value of the property.

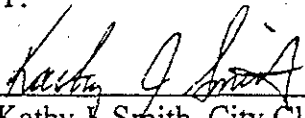
4. That this Ordinance shall be in full force and effect after its passage, approval and publication as required by law.

PRESENTED, PASSED AND ADOPTED at a regular meeting of the City Council of the City of Earlville, LaSalle County, Illinois, by an aye and nay roll call vote, with 5 voting aye, 0 voting nay, 1 absent, and 0 passing, which meeting was held on the 29th day of April, A.D. 2002.

Dated: April 29, 2002


Robert G. Smith, Mayor

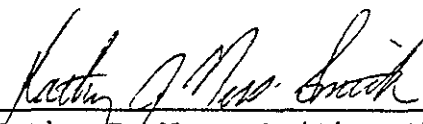
ATTEST:


Kathy J. Smith, City Clerk

STATE OF ILLINOIS)
)
COUNTY OF LASALLE)ss:
)
CITY OF EARLVILLE)

I, KATHY J. NESS-SMITH, City Clerk of the City of Earlville, in and for said County, in the State aforesaid, and keeper of the records, files and seal thereof, do hereby certify that the annexed instrument in writing is a true copy of the City Council Meeting Minutes, filed of record in said City, on the 29th day of April, 2002, as appears from the Records and Files of said City in my office.

GIVEN under my hand and seal of said City this 8th day of May, 2002.



Kathy J. Ness-Smith, City Clerk

(SEAL)

**CITY OF EARLVILLE
RECESSED SESSION APRIL 29, 2002**

Mayor Robert Smith called the City Council meeting to order at 7:00 P.M. The following members were present: Alderman Skip Osborne, Alderman Bonine, Alderman Mills, Alderman Steve Osborne, Alderman Busen, and Alderman Cwikla. Also present were City Clerk Kathy Smith, and City Attorney Kyle Stephens.

Visitors at the meeting were AEA Representative Andy Washelesky, Jim Vohs, Gene Coppes, Ron Bond and a McMahon Assoc. Inc. representative Tim Bronn.

ADDITIONAL AGENDA

None

PUBLIC VOICE

None

PUBLIC HEALTH & SAFETY

Alderman Bonine reported:

- Pressure will be put on Mr. Stockley the first of next month regarding the Strong Building. There is an interested party wanting to purchase it, however there are legal and insurance issues.

FINANCE

Alderman Skip Osborne reported:

- With the new state budget cuts the City has been notified they will be cut \$15,000.00, which is approximately an \$8.00 per person tax cut.

A motion was made by Alderman Skip Osborne and seconded by Alderman Cwikla that the bills be paid. All in favor by voice vote. Motion carried.

A motion was made by Alderman Skip Osborne and seconded by Alderman Mills to amend to Appropriation Ordinance 07-11-2001 making the line item transfers, within the same funds, listed below. On roll call. Motion carried.

Transfer \$ 55.00	from:	STREET SUPPLIES - Small Tools	01-500-50-5540
	to:	STREET SUPPLIES - Other	01-500-50-5530
Transfer \$ 1,520.00	from:	TIF I SERVICES - Legal	31-000-30-5365
	to:	TIF I SERVICES - Contract	31-000-30-5310
Transfer \$ 635.00	from:	WATER SERVICES - Rental of Equip.	51-530-30-5385
	to:	WATER SERVICES - Testing	51-530-30-5390
Transfer \$ 2,850.00	from:	WATER CAP.OUT. - Other Improve.	51-530-60-5650
	to:	WATER Inter-fund Operating Transfer	51-530-90-5920
Transfer \$10,750.00	from:	SEWER REPAIRS - Utility System	52-540-20-5220
	to:	SEWER SERVICES - Engineering	52-540-30-5325
Transfer \$ 1,130.00	from:	SEWER CAP.OUT - Other Improve.	52-540-60-5650
	to:	SEWER Interest Payment	52-540-70-5710

A motion was made by Alderman Skip Osborne and seconded by Alderman Bonine to hire as part-time public works employees Kevin Boltz, and James Dankenbring at \$8.00 per hour. On roll call. Motion carried.

Last years part-time employee, Eric Cwikla, is still employed by the City. He will be given first consideration when someone is needed.

POLICE

None

PUBLIC WORKS

Alderman Mills reported:

- Brenda from the County Health Department apparently gave permission to new property owners on Union St. to put in a septic tank. They were to inform the City, however they did not. They were informed to stop. They fall in the same compliance as the Whittaker and Michelson situations for water and sewer hook-ups.
- Mr. Black has expressed interest in building an apartment complex on property owned by Bob Goodbred by the bank and car wash. A tap on fee of \$30,000 was discussed. The City may look into entering into an agreement to reduce this as long as there are individual bills per unit.

Mayor Smith reminded the council that this property is zoned commercial, not residential. It would have to be re-zoned first, and consideration needs to be made if the City is willing to do this.

OLD BUSINESS

A motion was made by Alderman Mills and seconded by Alderman Skip Osborne to pass Ordinance 4-29-2002, Vacating a part of Ottawa Street. On roll call. Motion carried.

A motion was made by Alderman Skip Osborne and seconded by Alderman Bonine to approve the Agreement with BNSF in regards to closing the Ottawa Street railroad crossing. On roll call. Motion carried.

A motion was made by Alderman Mills and seconded by Alderman Steve Osborne to approve the Joint Petition with BNSF to the Illinois Commerce Commission in regards to the closing of the Ottawa Street railroad crossing. On roll call. Motion carried.

A motion was made by Alderman Mills and seconded by Alderman Bonine to sign release for survey etc. with AEA. On roll call. Motion carried.

A motion was made by Alderman Bonine and seconded by Alderman Mills to hire McMahon Assoc. Inc. to engineer, design and build the Wastewater Treatment Plant project.

Discussion:

- The plant is an aeration plant, which is a type of an oxidation ditch.
- The plant is 3,800 P.E.'s.
- It will come in at \$24.00 or less for the surcharge.
- For this, per the IEPA, banks, and the Finance Committee, the bid has to come in at \$2.8 million out the door.
- The engineering fees are \$335,000.
- The council indicated they were assured that the October 1st deadline for digging to start could be met. This deadline needs to be met for the city not to lose the grant money.
- If bids once again come in too high, the city will forfeit \$690,000 worth of grants.

- Sewer Operator, Jim Vohs, asked why the city is willing to pay engineering fees again, when they have already had a plan permitted.
- Alderman Bonine asked Tim Bronn to respond to this, in which he talked about doing an amendment. They are building an oxidation ditch, not a packaging plant. Construction documents need to be put together and a whole new set of plans need to be drawn up, etc.
- Jim stated he understood that, however that is not what he meant. He asked why, when the city has something that they already paid for, are they changing gears any paying to start all over again?
- No response was made.
- Mayor Smith pointed out that the proposal states that this is an estimate and is not cast in stone.

After discussion; On roll call, motion carried.

EXCUTIVE SESSION

None

REGULAR SESSION

A motion to adjourn the meeting at 7:30 p.m. was made by Alderman Mills and seconded by Alderman Skip Osborne. All in favor by voice vote.

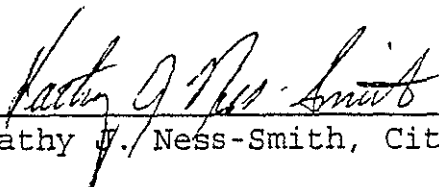


City Clerk
Kathy Smith

STATE OF ILLINOIS)
)
COUNTY OF LASALLE)ss:
)
CITY OF EARLVILLE)

I, KATHY J. NESS-SMITH, City Clerk of the City of Earlville,
in and for said County, in the State aforesaid, and keeper
of the records, files and seal thereof, do hereby certify
that the annexed instrument in writing is a true copy of the
Public Hearing Minutes, filed of record in said City, on the
29th day of April, 2002, as appears from the Records and
Files of said City in my office.

GIVEN under my hand and seal of said City this 8th day of
May, 2002.



Kathy J. Ness-Smith, City Clerk

(SEAL)

**CITY OF EARLVILLE
PUBLIC HEARING APRIL 29, 2002**

Mayor Robert Smith called the City Council Public Hearing at 6:45 P.M. The following members were present: Alderman Cwikla, Alderman Skip Osborne, Alderman Bonine, and Alderman Mills. Alderman Busen and Alderman Steve Osborne were absent. Also present were City Clerk Kathy Smith, and City Attorney Kyle Stephens.

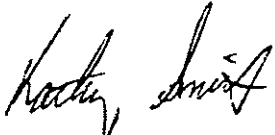
The Notice read as:

Notice is hereby given that a public hearing shall be held by the Mayor and City Council of the City of Earlville On April 29, 2002 at 6:45 pm at City Hall, 210 W. Railroad Street, Earlville Illinois to consider a proposed Ordinance pursuant to 65 ILCS 5/11-9-1, vacating a portion of the public road known as Ottawa Street at the point that such street is crossed by the Burlington Northern and Santa Fe Railway.

All interested parties may appear at such hearing and be given an opportunity to be heard.

There was no one present with any objections.

A motion was made by Alderman Mills and seconded by Alderman Cwikla to close the session at 6.55 P.M. By voice vote. Motion carried.

A handwritten signature in cursive script, appearing to read "Kathy Smith".

City Clerk
Kathy Smith

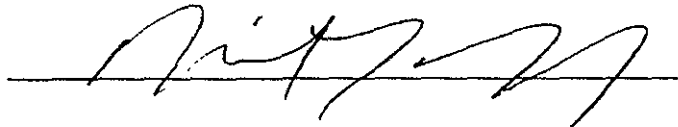
PROOF OF SERVICE

Michael L. Sazdanoff, an attorney, being duly sworn on oath, deposes and says that on the 3 day of June, 2002, he caused to be served, a true and correct copy of JOINT PETITION upon:

Mr. James C. Slifer
Director, Division of Highways
Illinois Department of Transportation
2300 S. Dirksen Pkwy., Suite 300
Administration Building
Springfield, IL 62764

Mr. William Sunley
Director of Local Roads and Streets
Illinois Department of Transportation
2300 S. Dirksen Pkwy., Suite 300
Springfield, IL 62764

by depositing same in the U.S. Mail depository located at Adams and Clinton Streets, Chicago, Illinois in an envelope(s) with first-class postage, prepaid.

A handwritten signature in black ink, appearing to read "Michael L. Sazdanoff", is written over a horizontal line.

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

THE BURLINGTON NORTHERN and
SANTA FE RAILWAY COMPANY, and
CITY OF EARLVILLE, LaSALLE COUNTY,
ILLINOIS,

Petitioners,

v.

STATE OF ILLINOIS, DEPARTMENT
OF TRANSPORTATION

Respondent.

Petition seeking an order from the Illinois
Commerce Commission authorizing permanent
closure and removal of the grade crossing located
at the intersection of Ottawa Street, in the City of
Earlville, LaSalle County, Illinois and the trackage
of The Burlington Northern and Santa Fe Railway
Company at milepost 72.14, DOT No. 079 627H.

Toz-0063

AMENDED JOINT PETITION

Now come joint petitioners, The Burlington Northern and Santa Fe Railway Company ("BNSF"), by its attorneys, Kenneth J. Wysoglad & Associates and City of Earlville, LaSalle County, Illinois and for their Amended Joint Petition to the Illinois Commerce Commission states as follows:

1. Petitioner, BNSF is a Delaware corporation authorized to transaction business in the State of Illinois and operates a common carrier service by railroad in interstate and intrastate commerce with certain trackage and other facilities located throughout the State of Illinois, including the City of Earlville, LaSalle County, Illinois.
2. Petitioner, City of Earlville, LaSalle County, Illinois ("City") is an Illinois municipal corporation.
3. Ottawa Street is a north/south roadway located within the geographic

Exhibit B

boundaries of the City and is under the jurisdiction of City.

4. BNSF operates certain railroad trackage extending in a generally east to west direction through City.
5. Ottawa Street traverses the trackage of BNSF by virtue of an at grade crossing located at milepost 72.14, DOT No. 079 627YH.
6. BNSF and City recommend and request that the at grade crossing at Ottawa Street and the tracks of BNSF, milepost 72.14, DOT No. 079 627H be permanently closed, the at grade crossing and warning devices removed and the roadway barricaded as the public convenience and necessity no longer require the existence of the aforesaid at grade crossing and public safety would be enhanced with the closure of the aforesaid at grade crossing.
7. City requests incentive compensation in the amount of \$30,000 from the Illinois Commerce Commission ("ICC") in accordance with the policy of the ICC as incentive for the voluntary closure of the Ottawa Street at grade crossing.
8. The City, in accordance with all legal requirements, has passed its ordinance and resolution vacating Ottawa Street on both sides and over the subject at grade crossing at milepost 72.14, DOT No. 079 627H. Attached hereto, marked Exhibit 1 and made a part hereof is a true and correct copy of City's resolution and/or ordinance vacating the subject roadway at the aforescribed location. As City, a public highway authority in interest, has vacated Ottawa Street on both sides of and across the at grade crossing location, Joint Petitioners believe that the provision of 625 ILCS 5/18c-

7401(3) have been met and the grade crossing can be closed, barricaded and removed without further order of the Illinois Commerce Commission. However, to the extent a determination and order is required from the Illinois Commerce Commission as to the closure and/or award of incentive compensation then Joint Petitioners herein request the Illinois Commerce Commission enter an order permanently closing and abolishing the grade crossing at the intersection of Ottawa Street and the trackage of BNSF, milepost 72.14, DOT No. 079 627H and award incentive compensation in accordance with the policy of the ICC.

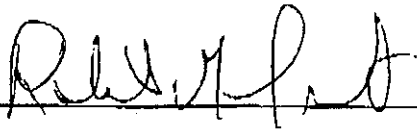
Wherefore, Joint Petitioners, The Burlington Northern and Santa Fe Railway Company and City of Earlville, LaSalle County, Illinois request the Illinois Commerce Commission, if it deems necessary, set the aforesaid matter for hearing and to the extent required by law enter an order abolishing and permanently closing the at grade crossing located at the intersection of vacated Ottawa Street and the trackage of BNSF at milepost 72.14, DOT No. 079 627H, award incentive compensation for the voluntary closure of the subject at grade crossing and such other relief as the Illinois Commerce Commission deems just and appropriate.

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

By: Cheryl L. Laska


Title: Manager of Public Projects

CITY OF EARLVILLE, LaSALLE COUNTY,
ILLINOIS

By: 

Title: MAYOR

KENNETH J. WYSOGLAD & ASSOCIATES


Michael L. Sazdanoff

Michael L. Sazdanoff
Kenneth J. Wysoglad & Associates
Attorneys for Petitioner
The Burlington Northern and Santa Fe Railway Company
118 S. Clinton Street, Suite 700
Chicago, Illinois 60661
(312) 441-0333

ORDINANCE 4-29-02

AN ORDINANCE VACATING A STREET AT THE OTTAWA STREET
CROSSING OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
IN THE CITY OF EARLVILLE, ILLINOIS

WHEREAS, the City of Earlville has determined that the public interest will be served by vacating a portion of Ottawa Street at the point that such street is crossed by the Burlington Northern and Santa Fe Railway, such intersection being:

the intersection of Burlington Northern and Santa Fe Railway's trackage and Ottawa Street, mile post 72.14, DOT No. 079627H.

WHEREAS, the City of Earlville has determined the statutorily dedicated portion of Ottawa Street serves no current or future public purpose and is currently a hazard to public health and safety;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EARLVILLE, LASALLE COUNTY, ILLINOIS AS FOLLOWS:

1. That the recitals contained in the preamble to this Ordinance are incorporated by reference as if set out in full herein.

2. That the City of Earlville shall, and hereby does, vacate:

the intersection of Burlington Northern and Santa Fe Railway's trackage and Ottawa Street, mile post 72.14, DOT No. 079627H.

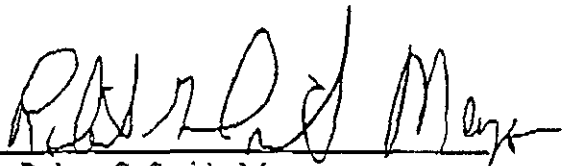
3. That the ownership of the property vacated by virtue of this Ordinance shall be vested in the adjoining property owner, Burlington Northern and Santa Fe Railway Company, pursuant to the provisions of Section 11-91-1 of the Illinois Municipal Code (65 ILCS 5/11-91-1), subject to the Burlington Northern and Santa Fe Railway reimbursing the City of Earlville for the publication costs incurred in publishing the public notice of the street vacation hearing, reimbursing the City of Earlville for the fee associated with the preparation of any

necessary plat of Survey, and reimbursing the City of Earlville for legal fees incurred by the City of Earlville for the City Attorney's work in preparing this Ordinance in the amount of Three Hundred Fifty (\$350.00) Dollars, and honoring all terms of the separate Agreement entered into contemporaneously by the parties, including payment of a specified sum the City Council has determined that is at least equal to the fair market value of the property.

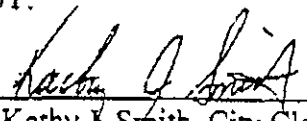
4. That this Ordinance shall be in full force and effect after its passage, approval and publication as required by law.

PRESENTED, PASSED AND ADOPTED at a regular meeting of the City Council of the City of Earlville, LaSalle County, Illinois, by an aye and nay roll call vote, with 5 voting aye, 0 voting nay, 1 absent, and 0 passing, which meeting was held on the 29th day of April, A.D. 2002.

Dated: April 29, 2002


Robert G. Smith, Mayor

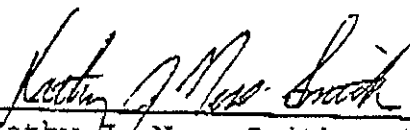
ATTEST:


Kathy J. Smith, City Clerk

STATE OF ILLINOIS)
)
COUNTY OF LASALLE) ss:
)
CITY OF EARLVILLE)

I, KATHY J. NESS-SMITH, City Clerk of the City of Earlville, in and for said County, in the State aforesaid, and keeper of the records, files and seal thereof, do hereby certify that the annexed instrument in writing is a true copy of the City Council Meeting Minutes, filed of record in said City, on the 29th day of April, 2002, as appears from the Records and Files of said City in my office.

GIVEN under my hand and seal of said City this 8th day of May, 2002.



Kathy J. Ness-Smith, City Clerk

(SEAL)

**CITY OF EARLVILLE
RECESSED SESSION APRIL 23, 2002**

Mayor Robert Smith called the City Council meeting to order at 7:00 P.M. The following members were present: Alderman Skip Osborne, Alderman Bonine, Alderman Mills, Alderman Steve Osborne, Alderman Busen, and Alderman Cwikla. Also present were City Clerk Kathy Smith, and City Attorney Kyle Stephens.

Visitors at the meeting were AEA Representative Andy Washelesky, Jim Vohs, Gene Coppes, Ron Bond and a McMahon Assoc. Inc. representative Tim Bronn.

ADDITIONAL AGENDA

None

PUBLIC VOICE

None

PUBLIC HEALTH & SAFETY

Alderman Bonine reported:

- Pressure will be put on Mr. Stockley the first of next month regarding the Strong Building. There is an interested party wanting to purchase it, however there are legal and insurance issues.

FINANCE

Alderman Skip Osborne reported:

- With the new state budget cuts the City has been notified they will be cut \$15,000.00, which is approximately an \$8.00 per person tax cut.

A motion was made by Alderman Skip Osborne and seconded by Alderman Cwikla that the bills be paid. All in favor by voice vote. Motion carried.

A motion was made by Alderman Skip Osborne and seconded by Alderman Mills to amend to Appropriation Ordinance 07-11-2001 making the line item transfers, within the same funds, listed below. On roll call. Motion carried.

Transfer \$ 55.00	from:	STREET SUPPLIES - Small Tools	01-500-50-5540
	to:	STREET SUPPLIES - Other	01-500-50-5530
Transfer \$ 1,520.00	from:	TIF I SERVICES - Legal	31-000-30-5365
	to:	TIF I SERVICES - Contract	31-000-30-5310
Transfer \$ 635.00	from:	WATER SERVICES - Rental of Equip.	51-530-30-5385
	to:	WATER SERVICES - Testing	51-530-30-5390
Transfer \$ 2,850.00	from:	WATER CAP.OUT. - Other Improve.	51-530-60-5650
	to:	WATER Inter-fund Operating Transfer	51-530-90-5920
Transfer \$10,750.00	from:	SEWER REPAIRS - Utility System	52-540-20-5220
	to:	SEWER SERVICES - Engineering	52-540-30-5325
Transfer \$ 1,130.00	from:	SEWER CAP.OUT - Other Improve.	52-540-60-5650
	to:	SEWER Interest Payment	52-540-70-5710

A motion was made by Alderman Skip Osborne and seconded by Alderman Bonine to hire as part-time public works employees Kevin Boltz, and James Dankenbring at \$8.00 per hour. On roll call. Motion carried.

Last years part-time employee, Eric Cwikla, is still employed by the City. He will be given first consideration when someone is needed.

POLICE

None

PUBLIC WORKS

Alderman Mills reported:

- Brenda from the County Health Department apparently gave permission to new property owners on Union St. to put in a septic tank. They were to inform the City, however they did not. They were informed to stop. They fall in the same compliance as the Whittaker and Michelson situations for water and sewer hook-ups.
- Mr. Black has expressed interest in building an apartment complex on property owned by Bob Goodbred by the bank and car wash. A tap on fee of \$30,000 was discussed. The City may look into entering into an agreement to reduce this as long as there are individual bills per unit.

Mayor Smith reminded the council that this property is zoned commercial, not residential. It would have to be re-zoned first, and consideration needs to be made if the City is willing to do this.

OLD BUSINESS

A motion was made by Alderman Mills and seconded by Alderman Skip Osborne to pass Ordinance 4-29-2002, Vacating a part of Ottawa Street. On roll call. Motion carried.

A motion was made by Alderman Skip Osborne and seconded by Alderman Bonine to approve the Agreement with BNSF in regards to closing the Ottawa Street railroad crossing. On roll call. Motion carried.

A motion was made by Alderman Mills and seconded by Alderman Steve Osborne to approve the Joint Petition with BNSF to the Illinois Commerce Commission in regards to the closing of the Ottawa Street railroad crossing. On roll call. Motion carried.

A motion was made by Alderman Mills and seconded by Alderman Bonine to sign release for survey etc. with AEA. On roll call. Motion carried.

A motion was made by Alderman Bonine and seconded by Alderman Mills to hire McMahon Assoc. Inc. to engineer, design and build the Wastewater Treatment Plant project.

Discussion:

- The plant is an aeration plant, which is a type of an oxidation ditch.
- The plant is 3,800 P.E.'s.
- It will come in at \$24.00 or less for the surcharge.
- For this, per the IEPA, banks, and the Finance Committee, the bid has to come in at \$2.8 million out the door.
- The engineering fees are \$335,000.
- The council indicated they were assured that the October 1st deadline for digging to start could be met. This deadline needs to be met for the city not to lose the grant money.
- If bids once again come in too high, the city will forfeit \$690,000 worth of grants.

- Sewer Operator, Jim Vohs, asked why the city is willing to pay engineering fees again, when they have already had a plan permitted.
- Alderman Bonine asked Tim Bronn to respond to this, in which he talked about doing an amendment. They are building an oxidation ditch, not a packaging plant. Construction documents need to be put together and a whole new set of plans need to be drawn up, etc.
- Jim stated he understood that, however that is not what he meant. He asked why, when the city has something that they already paid for, are they changing gears any paying to start all over again?
- No response was made.
- Mayor Smith pointed out that the proposal states that this is an estimate and is not cast in stone.

After discussion; On roll call, motion carried.

EXECUTIVE SESSION

None

REGULAR SESSION

A motion to adjourn the meeting at 7:30 p.m. was made by Alderman Mills and seconded by Alderman Skip Osborne. All in favor by voice vote.

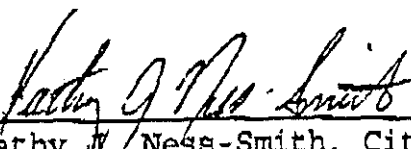


City Clerk
Kathy Smith

STATE OF ILLINOIS)
)
COUNTY OF LASALLE)ss:
)
CITY OF EARLVILLE)

I, KATHY J. NESS-SMITH, City Clerk of the City of Earlville, in and for said County, in the State aforesaid, and keeper of the records, files and seal thereof, do hereby certify that the annexed instrument in writing is a true copy of the Public Hearing Minutes, filed of record in said City, on the 29th day of April, 2002, as appears from the Records and Files of said City in my office.

GIVEN under my hand and seal of said City this 8th day of May, 2002.



Kathy J. Ness-Smith, City Clerk

(SEAL)

**CITY OF EARLVILLE
PUBLIC HEARING APRIL 29, 2002**

Mayor Robert Smith called the City Council Public Hearing at 6:45 P.M. The following members were present: Alderman Cwikla, Alderman Skip Osborne, Alderman Bonine, and Alderman Mills. Alderman Busen and Alderman Steve Osborne were absent. Also present were City Clerk Kathy Smith, and City Attorney Kyle Stephens.

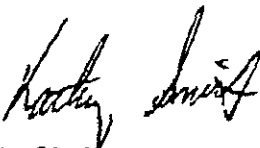
The Notice read as:

Notice is hereby given that a public hearing shall be held by the Mayor and City Council of the City of Earlville On April 29, 2002 at 6:45 pm at City Hall, 210 W. Railroad Street, Earlville Illinois to consider a proposed Ordinance pursuant to 65 ILCS 5/11-9-1, vacating a portion of the public road known as Ottawa Street at the point that such street is crossed by the Burlington Northern and Santa Fe Railway.

All interested parties may appear at such hearing and be given an opportunity to be heard.

There was no one present with any objections.

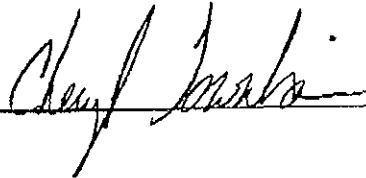
A motion was made by Alderman Mills and seconded by Alderman Cwikla to close the session at 6.55 P.M. By voice vote. Motion carried.


City Clerk
Kathy Smith

STATE OF MISSOURI)
) SS
COUNTY OF GREENE)

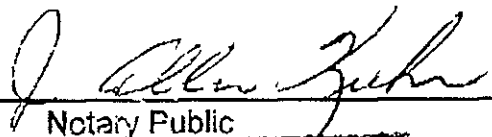
VERIFICATION

Cheryl Townlian, being first duly sworn deposes and states that she is Manager, Public Projects for The Burlington Northern and Santa Fe Railway Company, Joint Petitioner herein. That she is duly authorized by said railroad company to sign, verify and file the foregoing Amended Joint Petition and that the matters set forth in said Amended Joint Petition are true and correct to the best of her knowledge, information and belief.

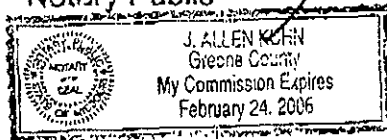


Subscribed and sworn to

before me this 2ND day of
January, 2002



Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF LaSALLE)

VERIFICATION

I, ROBERT G. SMITH

being first duly sworn on oath, deposes and states that he is _____

MAYOR of the City of Earlville, LaSalle County,
Illinois, that he is duly authorized to sign, verify and file the foregoing Amended Joint
Petition and that the matters set forth in said petition are true and correct to the best of his
knowledge, information and belief.

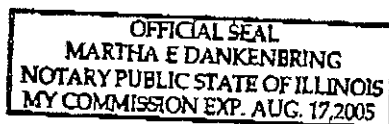
Robert G. Smith

Subscribed and sworn to

before me this 11th day of
July, 2002

Martha E. Dankenbring

Notary Public



PROOF OF SERVICE

Michael L. Sazdanoff, an attorney, being duly sworn on oath, deposes and says that on the 30 day of JULY, 2002, he caused to be served, a true and correct copy of **AMENDED JOINT PETITION** upon:

Mr. James C. Slifer
Director, Division of Highways
Illinois Department of Transportation
2300 S. Dirksen Pkwy., Suite 300
Administration Building
Springfield, IL 62764

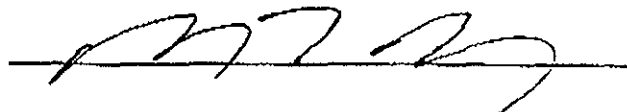
Mr. William Sunley
Director of Local Roads and Streets
Illinois Department of Transportation
2300 S. Dirksen Pkwy., Suite 300
Springfield, IL 62764

Ms. June B. Tate
Administrative Law Judge
Illinois Commerce Commission, 8th Floor
160 N. LaSalle Street
Chicago, Illinois 60601

Mr. Henry Humphries
Railroad Staff
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, Illinois 62701

Mr. Robert Smith
Mayor, City of Earlville
P.O. Box 98
Earlville, Illinois 60518

by depositing same in the U.S. Mail depository located at Adams and Clinton Streets, Chicago, Illinois in an envelope(s) with first-class postage, prepaid.



STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Burlington Northern and Santa Fe Railway Company, and City of
Earlville, LaSalle County, Illinois,
Petitioners,

V.

State of Illinois Department of Transportation,
Respondent.

T02-0063

Petition seeking an order from the Illinois Commerce Commission
authorizing permanent closure and removal of the grade crossing
located at the intersection of Ottawa Street, in the City of Earlville,
LaSalle County, Illinois and the trackage of the Burlington Northern and
Santa Fe Railway Company at milepost 72.14, DOT No. 079 627H.

ORDER

By the Commission:

On June 4, 2002, the Burlington Northern and Santa Fe Railway Company ("the Railroad") and the City of Earlville, LaSalle County, Illinois ("the City") filed with the Illinois Commerce Commission, a verified joint petition in the above-captioned matter naming as Respondent the State of Illinois, Department of Transportation ("IDOT"). On August 5, 2002, the Railroad and the City filed their Amended Joint Petition, in which they requested incentive compensation from the Grade Crossing Protection Fund in accordance with the policy of the Commission.

Pursuant to notice, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's Chicago office on August 13, 2002. Publication, giving notice of the proposed crossing closure and the date and place of the hearing, was made in a newspaper of general circulation in LaSalle County. The publication was sponsored by Henry Humphries, Railroad Section, Transportation Division of the Commission and entered into evidence. The Railroad and the City were represented by counsel. Testimony and evidence in support of the petition was provided by Robert G. Smith, Mayor of Earlville.

A proposed order was served upon the parties on or about August 22, 2002. Briefs on exceptions, as filed, were considered herein.

The Railroad, in its petition and in its direct case, proposes that safety will be improved by closure of the Ottawa Street crossing. The Railroad maintains two mainline tracks at the crossing generally running in an east/west direction through the

Exhibit C

City. Train traffic consists of approximately twenty-five (25) trains traveling through in daylight and at night. Average daily traffic ("ADT") was reported by The Honorable Mr. Smith at 1,250 vehicles. However, this amount of traffic was not observed by Mr. Humphries on two different occasions. Mr. Humphries states that Commission records show that 325 vehicles use the crossing. None of the automobile traffic will be inconvenienced since there are three other crossings in close proximity. Warning devices at the crossing consist of automatic flashing light signals and gates.

The Railroad and the City are of the opinion that the public's safety would benefit from the closure of the grade crossing at Ottawa Street. The City passed Ordinance 4-29-02 stating that the statutorily dedicated portion of Ottawa Street serves no future public purpose and is a hazard to public health and safety. The City subsequently vacated both sides of Ottawa Street and over the grade crossing at milepost 72.14, DOT Number 079 627H. Closure of the crossing will be at the expense of the Railroad.

The City, in the Amended Joint Petition, requested incentive funds for the voluntary closing of a crossing. Effective September 20, 2000, the Commission approved use of the Grade Crossing Protection Fund for incentive grants to local highway agencies in return for closure of public grade crossings. The size of the incentive payment is determined by the ADT and ranges from \$25,000 for an ADT of less than 250, \$30,000 for an ADT of 251 to 500, and \$35,000 for an ADT in excess of 500. If the incentive payment is approved, the funds are transferred by IDOT directly into the community's Motor Fuel Tax account. The community is permitted to use the money only for the purposes IDOT allows for Motor Fuel Tax funds. The City therefore requests \$30,000 as an appropriate incentive for closure of this crossing.

The Commission, having considered the evidence of record, is of the opinion and finds that:

- (1) the Burlington Northern and Santa Fe Railway Company is a Delaware corporation with a principal place of business in Fort Worth, Texas, engaged in the transportation of persons and/or property by rail in the State of Illinois and as such, is a rail carrier as defined by the Illinois Commercial Transportation Law ("Law");
- (2) the City of Earlville, LaSalle County, Illinois, is a political subdivision organized and existing under and by virtue of the laws of the State of Illinois;
- (3) the recitals of fact set forth in the prefatory portion of this order are supported by evidence of record and are hereby adopted as findings of fact;
- (4) public convenience and necessity do not require the retention of the railroad crossing at milepost 72.14, AAR/DOT Number 079 627H, intersecting Ottawa Street, in the City of Earlville, LaSalle County, Illinois,

and public safety requires that said crossing be closed, barricaded, and abolished;

- (5) it is fair and reasonable that the entire cost of closing, barricading, and abolishing the said crossing should be borne by the Railroad;
- (6) it is fair and reasonable that an incentive payment of \$30,000 be made by the Grade Crossing Protection Fund to the City for the voluntary closing of the subject crossing;
- (7) the closure of the subject crossing should be completed within six months of the date of this Order;
- (8) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 require each "person" as defined by 5/18c-1104 to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Burlington Northern and Santa Fe Railway Company be, and it is hereby required and directed to close, barricade, and abolish the crossing at Ottawa Street, milepost 72.14, AAR/DOT Number 079 627H in the City of Earlville, LaSalle County, Illinois.

IT IS FURTHER ORDERED that the cost for the closure of the subject crossing shall be borne solely by the Railroad;

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall transfer from the Grade Crossing Protection Fund an amount not to exceed \$30,000 to the Motor Fuel Tax account of the City of Earlville, LaSalle County, Illinois.

IT IS FURTHER ORDERED that the City of Earlville may use the funds granted in return for the voluntary closing of the Ottawa Street crossing, only for the purposes IDOT allows for Motor Fuel Tax funds.

IT IS FURTHER ORDERED that the closure of the subject crossing shall be completed within six months of the date of this Order. Barricades shall be in place prior to the removal of the crossing surface and warning devices.

IT IS FURTHER ORDERED that any person making a Request for Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a

request with the Director of Processing no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time which exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company shall submit to the Director of Processing, Transportation Division of the Commission within five (5) days of the completion of the work herein required of it, a National Inventory Update Form as a notice of said completion.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 23rd day of October 2002.

Kevin H. Wright
Chairman

JUDGE	<i>JBI</i>
SECTION CHIEF	
ORDERS SUPERVISOR	<i>[Signature]</i>

PROOF OF SERVICE

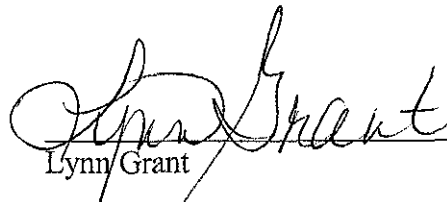
Lynn Grant, deposes and says that on the 17 day of April, 2003, she caused to be served via U.S. Mail in Roseville, Illinois, a true and correct copy of MOTION FOR INTERLOCUTORY REVIEW upon:

Judge Rick Korte,
Chief Administrative Law Judge
Review & Examination Program
527 East Capitol Avenue, 9th Floor
Springfield, IL 62701

Michael L. Sazdanoff
Kenneth J. Wysoglad & Associates
118 South Clinton Street
Suite 700
Chicago, Illinois 60661

Illinois Department of Transportation
Attention: Mr. James Easterly
2300 South Dirksen Parkway
Springfield, Illinois 62764

Illinois Commerce Commission
Railroad Section
Attention: Mr. Henry Humphries
527 East Capitol Avenue
Springfield, Illinois 62701


Lynn Grant